

**JAN 13 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

APOLINAR RAMIREZ-ARELLANO,

Defendant - Appellant.

No. 04-10204

D.C. No. CR-03-00254-1-LRH

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Submitted January 9, 2006<sup>\*\*</sup>

Before: HUG, O'SCANNLAIN and SILVERMAN, Circuit Judges.

Apolinar Ramirez-Arellano appeals from the 120-month mandatory minimum sentence imposed following his guilty plea conviction for distribution of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B)(viii), and

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

possession of methamphetamine with intent to distribute, in violation of § 841(a)(1) and (b)(1)(A)(viii). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Ramirez-Arellano appeals solely to preserve his contention that the mandatory minimum sentence provisions of 21 U.S.C. § 841 are unconstitutional. As appellant acknowledges, we must reject his challenge to the statutory mandatory minimum sentences under our existing case law. *See, e.g., United States v. Linn*, 880 F.2d 209, 217 (9th Cir. 1989) (holding section 841's mandatory minimum sentencing scheme does not violate due process, equal protection, or separation of powers doctrine).

Because Ramirez-Arellano was sentenced to the statutory mandatory minimum, he cannot argue that his substantial rights were affected under *United States v. Booker*, 543 U.S. 220 (2005). *See United States v. Dare*, 425 F.3d 634, 643 (9th Cir. 2005).

This court has received appellant's pro se "Appendix to a Direct Appeal," which we construe as a motion to amend his opening brief. Because appellant is represented by counsel, only counsel may file motions, and we therefore decline to entertain the motion.

**AFFIRMED.**